

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BRIAN ARMON DUCKSWORTH,

Plaintiff,

v.

Case No. 21-cv-197-pp

HANNAH UTTER,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION TO PAY INITIAL PARTIAL
APPELLATE FILING FEE FROM RELEASE ACCOUNT (DKT. NO. 84)**

On July 3, 2024, the court granted plaintiff Brian Armon Ducksworth's motion for leave to proceed on appeal without prepaying the filing fee and ordered him to pay a \$1.88 initial partial filing fee by August 2, 2024. Dkt. No. 83. The plaintiff now seeks a court order allowing him to pay the \$1.88 fee from his release account. Dkt. No. 84. He says he "is indigent and does not have the funds in his regular account." Id.

"[P]risoner's account," as used in 28 U.S.C. §1915, "encompasses both [an incarcerated person's] release account and his general account." Spence v. McCaughtry, 46 F. Supp. 2d 861, 862 (E.D. Wis. 1999). The release account "is a restricted account maintained by the Wisconsin Department of Corrections to be used upon the prisoner's release from custody upon completion of his sentence." Wilson v. Anderson, No. 14-C-798, 2014 WL 3671878, at *3 (E.D. Wis. July 23, 2014) (citing Wis. Admin. Code §DOC 309.466). Courts in Wisconsin have permitted prisoners to use their release accounts to pay the

initial partial filing fee for bringing a lawsuit or filing an appeal. E.g. Doty v. Doyle, 182 F. Supp. 2d 750, 751 (E.D. Wis. 2002); Spence, 46 F. Supp. 2d at 862–63. This applies only to the *initial* partial filing fee and does not apply to the remainder of the filing fee or other litigation costs. See Collins v. State of Wisconsin, No. 20-C-521, 2020 WL 6361860, at *2 (E.D. Wis. Oct. 29, 2020) (“Although courts often will allow plaintiffs to pay the *initial partial filing fee* with funds from their release account, they generally do not allow plaintiffs to deplete their release accounts by paying the full filing fee from that account.”); McCalla v. Thompson, No. 18-cv-1895-JPS, 2019 WL 3220551, at *2 (E.D. Wis. July 17, 2019) (noting that, absent unusual circumstances, a federal court “lacks the authority—statutory or otherwise—to order that a prisoner may tap into his release account to pay current (or future) litigation costs”).

The court will grant the plaintiff’s request as follows: The plaintiff may use the funds in his release account to pay the \$1.88 initial partial filing fee for his appeal *only* if he does not have sufficient funds in his regular account to pay the full \$1.88 fee. If the plaintiff has any money in his regular account, he must first use that money to pay the initial partial filing fee. He must deplete *all* the funds in his regular account before he may access the money in his release account. The plaintiff should take care to precisely word his disbursement request so that the request complies with this order.

The court will send a copy of this order to the Warden at Oshkosh Correctional Institution, where the plaintiff is incarcerated.

The court **GRANTS** the plaintiff's motion to pay the initial partial appellate filing fee from his release account. Dkt. No. 84. The plaintiff may use the funds in his release account to pay the \$1.88 fee as explained in this order.

Dated in Milwaukee, Wisconsin this 17th day of July, 2024.

BY THE COURT:



HON. PAMELA PEPPER
United States District Judge